

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO *ex rel.*

State Engineer, *et al.*,

Plaintiffs,

v.

69cv07941 BB

Rio Chama Adjudication

RAMON ARAGON, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the following *pro se* Motions:

<u>Doc. No.</u>	<u>Filed Date</u>	<u>Party</u>	<u>Subfile No.</u>	
9666	April 8, 2010	Leandro Dominguez	236	(<i>See</i> Doc. No. 9596) ¹
9667	April 9, 2010	Pedro Casados Sr.	233	(<i>See</i> Doc. No. 9610)
9670	April 12, 2010	Sandie Holguin	274	(<i>See</i> Doc. No. 9624)
9671	April 12, 2010	James L. Maestas	289	(<i>See</i> Doc. No. 9611)
9672	April 12, 2010	Johnny L. Martinez	245-B	(<i>See</i> Doc. No. 9626)
9673	April 13, 2010	Francisco A. Herrera	244, 247	(<i>See</i> Doc. No. 9634)
9674	April 13, 2010	Enrique S. Rael	252	(<i>See</i> Doc. No. 9612)
9678	April 15, 2010	Jose Pete Maestas	290	(<i>See</i> Doc. No. 9630)
9681	April 16, 2010	Leo J. Martinez	239	(<i>See</i> Doc. No. 9637)
9682	April 16, 2010	Thomas Martinez	274	(<i>See</i> Doc. No. 9608)
9684	April 19, 2010	Joe Branch	229, 266	(<i>See</i> Doc. No. 9625)
9691	April 23, 2010	Rose Garcia	241	(<i>See</i> Doc. No. 9633)
9692	April 23, 2010	Orlando Serna	266	(<i>See</i> Doc. No. 9635)
9693	April 26, 2010	Santiago A. Gallegos	239	(<i>See</i> Doc. No. 9632).

Procedural Background

On December 19, 2009, Special Master Gabin filed her Report and Recommendations on Priorities for Three Acequias (Doc. No. 9546). On March 31, 2010, five *pro se* parties filed their

¹The *pro se* Motions refer to previously filed Objections to the Special Master's Report (Doc. No. 9546, filed December 16, 2009) but do not identify the relevant subfile numbers. The documents cited after the subfile numbers are the previously filed Objections which identify the relevant subfile numbers.

Joint Amended Objections (Doc. No. 9657) to the Special Master's Report. Several *pro se* parties filed objections to the Special Master's Report "request[ing] a hearing too [sic] prove that an earlier and proper date of August 11, 1598 is the correct priority date for [their] water right on the Acequia de Chamita." (Doc. Nos. 9588-9593, 9596, 9598-9602, 9608-9612, 9618-9620, 9622, 9624-9630, 9632-9637, 9643, 9649, filed between February 16 and March 25, 2010).

The State filed a motion asking the Court to limit its consideration of objections to the Special Master's Report to those filed by persons that timely objected to Notices and Orders to Show Cause. (*See* Doc. No. 9606, filed February 25, 2010). No parties filed a timely response opposing the State's motion to limit consideration of objections. The Court granted the State's motion to limit consideration of objections to the Special Master's Report to those filed by persons that timely objected to Notices and Orders to Show Cause. (*See* Doc. No. 9700, filed April 28, 2010). After the Court granted the State's motion, *pro se* parties Ron W. Rundström and Eloy J. Garcia filed a response (Doc. No. 9711, filed May 6, 2010) opposing the State's motion to limit consideration of objections.

Rundström's and Garcia's Motion to Reconsider

Rundström and Garcia were late in filing their Response opposing the State's motion to limit consideration of objections to the Special Master's Report. In their Response, Rundström and Garcia ask the Court to "reverse, change, or modify its [Order (Doc. No. 9700, filed April 28, 2010)] to include all the current *pro se* parties who filed an objection with evidence for the August 11, 1598 priority date for the Acequia De Chamita only." (Doc. No. 9711 at 4, filed May 6, 2010). The Court will construe their Response to be a motion to reconsider. *See Haines v. Kerner*, 404 U.S. 519,

520-21(1972) (A *pro se* litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers).

Rundström and Garcia state: “What is important is letting the evidence speak. All that is wished, is that the objection and evidence for a date change to August 11, 1598 for the Acequia de Chamita only, in the Special Master’s Report be considered by this Honorable Court.” (Response at 4). They then ask the Court to reconsider its Order (Doc. No. 9700, filed April 28, 2010) and “to include all the current *pro se* parties who filed an objection with evidence for the August 11, 1598 priority date for the Acequia De Chamita only.” (*Id.*).

Rundström and Garcia filed their late Response/motion to reconsider on behalf of themselves and several other *pro se* objectors. (*See* Response at 1). Rundström and Garcia have also filed their Joint Amended Objections to the Special Master’s Report in the form of a 63 page brief with 197 pages of exhibits. (*See* Doc. No. 9657, filed March 31, 2010). Because Rundström and Garcia timely filed objections to the Notices and Orders to Show Cause (*See* Doc. Nos. 3974.15 and 3974.19, filed December 7, 1994), the Court will consider Rundström’s and Garcia’s Joint Amended Objections, subject to the Court’s ruling on the State’s pending Motion to Limit Review to Evidence and Testimony Presented to Special Master at Hearings on Disputed Priorities of Acequias de Chamita, Hernandez and Los Salazares (Doc. No. 9683, filed April 19, 2010).

The Court will deny Rundström’s and Garcia’s request to include all the other *pro se* parties who filed objections for the reasons given below and in the Court’s Order of April 28, 2010 (Doc. No. 9700 at 3-4).

***Pro Se* Motions to be Included as Part of the Joint Amended Objections**

The *pro se* motions now before the Court state the parties “wish to be included as part of the” Joint Amended-Objections (Doc. No. 9657, filed March 31, 2010) and ask the Court “to change the 1600 priority date in the Special Master’s Report [Doc. No. 9546, filed December 16, 2009] and adopt the proper assignment of an August 11, 1598 priority date for the Acequia De Chamita only.” The *pro se* motions cited above do not present any argument but state that the parties are “in full support of the submitted documents, and exhibits” of the Joint Amended-Objections. The *pro se* motions cited above are, in essence, objections to the Special Master’s Report (Doc. No. 9546, filed December 16, 2009) that adopt the arguments in the Joint Amended-Objections by reference. *See Roman-Nose v. New Mexico Dep’t of Human Services*, 967 F.2d 435, 437 (10th Cir. 1992) (“The characterization of the action and the claim for relief by a *pro se* litigant is not dispositive on the availability of relief in federal court.”).

On April 28, 2010, the Court entered its Memorandum Opinion and Order limiting its consideration of objections to the Special Master’s Report to those filed by persons that timely objected to the Notices and Orders to Show Cause or their successors-in-interest. (*See* Doc. No. 9700 at 4). The Court’s review of the record showed that timely objections to the Notices and Orders to Show Cause were filed for the following subfiles:

<u>Subfile No.</u>	<u>Defendant</u>	<u>Doc. No.</u>
37	Willie A. Martinez	3974.3
49	Viola G. Salazar and Henry C. Salazar, Jr.	3974.4
17, 19	Donald R. Tittsworth and Lynn Cravens	3974.5
33, 91	C. Paul Martinez	3974.6
3	Arthur R. Trujillo	3974.7
3	Leonard Valerio	3974.8
150	Arturo A. Martinez	3974.9
145	Phil V. Sanchez	3974.10
152	Joe L. Maestas	3974.11

246	A. B. Valdez	3974.12
229	Juan D. Archuleta	3974.13
275	Pete Trujillo and Lorraine V. Trujillo	3974.14
285	Eloy J. Garcia	3974.15
258	Kenneth C. Marthey	3974.16
282	Jose Fidel Trujillo	3974.17
230, 272	Richard M. Salazar	3974.18
274	Ron W. Rundström	3974.19
141	Bonifacio I. Vasquez	3993.1

(Doc. No. 9700 at 3, filed April 28, 2010).

The Court will **DENY** the following motions because there were no timely objections to the Notices and Orders to Show Cause for their respective subfiles:

<u>Doc. No.</u>	<u>Filed Date</u>	<u>Party</u>	<u>Subfile No.</u>	
9666	April 8, 2010	Leandro Dominguez	236	(See Doc. No. 9596)
9667	April 9, 2010	Pedro Casados Sr.	233	(See Doc. No. 9610)
9671	April 12, 2010	James L. Maestas	289	(See Doc. No. 9611)
9672	April 12, 2010	Johnny L. Martinez	245-B	(See Doc. No. 9626)
9673	April 13, 2010	Francisco A. Herrera	244, 247	(See Doc. No. 9634)
9674	April 13, 2010	Enrique S. Rael	252	(See Doc. No. 9612)
9678	April 15, 2010	Jose Pete Maestas	290	(See Doc. No. 9630)
9681	April 16, 2010	Leo J. Martinez	239	(See Doc. No. 9637)
9691	April 23, 2010	Rose Garcia	241	(See Doc. No. 9633)
9692	April 23, 2010	Orlando Serna	266	(See Doc. No. 9635)
9693	April 26, 2010	Santiago A. Gallegos	239	(See Doc. No. 9632).

The Court will grant the motions of three *pro se* parties who did not file objections to the Notices and Orders to Show Cause because their motions refer to subfile numbers for which objections were timely filed. Those three *pro se* parties may be successors-in-interest to the persons that timely filed objections to the Notices and Orders to Show Cause. No party filed a response in opposition to the *pro se* motions now before the Court. See D.N.M.LR-Civ. 7.1(b) (“The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.”).

The Court will **GRANT** the following motions because there was a timely filed objection to the Notice and Order to Show cause for Subfile No. 274 (*See* Objection by Ron W. Rundström, Doc. No. 3974.19, filed December 7, 1994):

<u>Doc. No.</u>	<u>Filed Date</u>	<u>Party</u>	<u>Subfile No.</u>	
9670	April 12, 2010	Sandie Holguin	274	(<i>See</i> Doc. No. 9624)
9682	April 16, 2010	Thomas Martinez	274	(<i>See</i> Doc. No. 9608).

The Court will **GRANT in part** with respect to Subfile No. 229 and **DENY in part** with respect to Subfile No. 266 the following motion because there was a timely filed objection to the Notice and Order to Show Cause for Subfile No. 229 (*See* Objection by Juan D. Archuleta, Doc. No. 3974.13, filed December 7, 1994) but no objection was filed to the Notice and Order to Show Cause for Subfile No. 266:

<u>Doc. No.</u>	<u>Filed Date</u>	<u>Party</u>	<u>Subfile No.</u>
9684	April 19, 2010	Joe Branch	229, 266 (<i>See</i> Doc. No. 9625).

IT IS SO ORDERED.



BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE